around in order to embarrass the plaintiff and he even incited this witness to create a scene in the plaintiff's office in front of his other clients — to which of course the witness very properly turned a deaf ear.

On the whole what the plaintiff really needs is, I think, not a large fortune by way of compensation as damages but some reasonable sum which will serve to vindicate his position and assuage his wounded feelings. I think a sum of $7,350 (the equivalent of £1000 sterling) in all should be adequate particularly as the costs payable by the defendant will be quite heavy having regard to the length of the trial. I was almost inclined at one stage to reduce the costs payable, whoever won, but I do not propose to do so. I should like to make it clear that, in future, counsel, however successful they may be, will run the risk of reduced costs if they do not keep within a reasonable range of the estimated number of days for which they asked. Here I think that the plaintiff and his counsel were less to blame for the length of the trial although the evidence relating to aggravation could have been considerably shortened.

The moral to be derived from these proceedings, and which the profession would perhaps be wise to take to heart, appears to be as follows: —

Never place yourself, as a professional man on whom your client depends for professional legal advice, in a situation of deep obligation to that client to such an extent that the value and purpose of the legal advice and your proper relationship with him as solicitor and client and the services you render are likely to be jeopardized by your involvement with him in extraneous private dealings and transactions which you can reasonably avoid.

For the benefit of the Registrar when taxing costs I would indicate that the getting-up fee should not exceed $2,500 because, as I have already said, the law is reasonably clear despite the researches in which both counsel appear to have indulged. I should not be taken as fixing the getting-up fee at this figure or of binding the Registrar. I am merely indicating what the maximum amount, in my view, should be. Counsel are of course at liberty to convince the Registrar otherwise.

Judgment will accordingly be entered for the plaintiff in the sum of $7,350 with costs.

Judgment for the plaintiff

Solicitors: *Chung & Co.; S. C. Goho & Co.*

RE ALKAFFS' SETTLEMENT

[O.C.J. (Choor Singh J.) March 1, 1971]

[Singapore — Originating Summons No. 41 of 1970]

Wills and Trusts — Settlement — Construction — Grandchildren — Meaning of.

This originating summons was taken out to determine certain questions relating to a settlement dated the 21st December, 1888. The relevant provision with regard to the distribution of the capital estate reads as follows: "Upon trust nevertheless at the expiration of the period of 21 years ... for such person or persons then living as is or are the grandchild or grandchildren of the settlors or either of them or the said Syed Abdullah bin Abdulrahman Alkaff deceased and if more than one as tenants-in-common in the proportion of 2 shares to every grandson and 1 share to every granddaughter or in the event of a total failure of issue of the settlors and the said Syed Abdullah bin Abdulrahman Alkaff then for such person or persons as would then be entitled thereto according to Mohammedan Law were the survivor of the settlors then to die possessed of the said trust premises intestate and in the shares and proportions in which according to the same law such persons (if more than one) would be so entitled as aforesaid".

The questions which arose for construction were: —

(1) Whether upon the true construction of the aforesaid settlement the capital estate is distributable on the arrival of the date of its distribution (a) only among such person or persons then living as is or are the grandchild or grandchildren of the settlors and their brother Syed Abdullah or (b) among such person or persons then living as is or are the issue however remote of these three persons.

(2) Should the court be of the opinion that the capital estate is distributable among such person or persons as is or are the issue however remote of the settlors and their brother Syed Abdullah and should any such issue have children living at the date of distribution whether: (a) such issue shall share in the distribution of the capital estate to the exclusion of his or her children, if any; or (b) both such issue and his or her children shall share in the distribution as tenants-in-common with other issue.

Held: (1) the disposition of the capital estate consists of two gifts namely (i) the original gift to the person or persons answering the description of "grandchild" or "grandchildren" and (ii) a substitutional gift to other remoter descendants in case there are no such grandchild or grandchildren living at the date of distribution; that the court must look at the operative and effective part of the clause containing the original gift to see what words are used, and if clear and unambiguous words are used then the court must give effect to those words;

(2) the words "grandchild" and "grandchildren" are plain, precise and unambiguous words which ought to be given their ordinary meaning and that the capital estate is distributable only among such person or persons then living as is or are the grandchild or grandchildren of the settlors and their brother Syed Abdullah;

(3) the second question, therefore, does not arise for consideration.

Cases referred to:-

(1) *In re Alkaff's Settlements* [1928] S.S.L.R. 188.

(2) *Orford (Earl)* v. *Churchill* (1814) 35 E.R. 401.

(3) *In re Rawlinson* [1909] 2 Ch. 36.

ORIGINATING SUMMONS.

M. Karthigesu for the plaintiff.

Eric Choa for the first defendant.

Y. R. Jumabhoy and *Kirpal Singh* for the second defendants.

Cur. Adv. Vult.

Choor Singh J.: This is an application made by way of originating summons asking for the determination of certain questions arising on the construction of the settlement of Syed Mohamed bin Abdulrahman Alkaff and Syed Shaik bin Abdulrahman Alkaff dated the 21st December 1888.

The settlors conveyed a number of freehold and leasehold properties in Singapore to trustees to hold upon trust for a period of twenty-seven named lives

in being and twenty-one years longer or until all the children of the settlors and of their deceased brother Syed Abdullah bin Abdulrahman Alkaff being dead, the youngest child of such children should attain the age of twenty-one years, whichever period should be shorter. The settlement then provided for distribution of the *corpus* at the end of such period, and for distribution of net income in the meantime. The said settlor Syed Mohamed bin Abdulrahman Alkaff died without leaving issue. Accordingly the only persons who may be interested in the income and capital of this settlement are the grandchildren and other issue of the said Syed Shaik bin Abdulrahman Alkaff and of his brother Syed Abdullah bin Abdulrahman Alkaff and there are at present numerous such descendants. Some of them are in Singapore but the majority reside in Arabia.

The summons is taken out by Syed Ahmed bin Mohamed bin Hussain bin Abdullah Alkaff, who is a great grandson of Syed Abdullah bin Abdulrahman Alkaff, a brother of the said settlors. The first defendant is a grandson of the said settlor Syed Shaik bin Abdulrahman Alkaff and represents the grandchildren of the settlors as a class. The second defendants are trustees of the above-mentioned settlement.

The two questions which the court is asked to determine are: —

"(1) Whether upon the true construction of the abovenamed Settlement dated the 21st December 1888 the capital estate, subject to the trusts of the said settlement, is distributable on the arrival of the date of its distribution: —

(a) only among such person or persons then living as is or are the grandchild or grandchildren of the settlor Syed Shaik bin Abdulrahman Alkaff and his brother Syed Abdullah bin Abdulrahman Alkaff; or

(b) among such person or persons then living as is or are the issue however remote of the said settlor Syed Shaik bin Abdulrahman Alkaff and his brother Syed Abdullah bin Abdulrahman Alkaff.

(2) Should the court be of the opinion that the capital estate, subject to the trusts of the settlement, is distributable on the arrival of the date of its distribution among such person or persons as is or are the issue however remote of the settlor Syed Shaik bin Abdulrahman Alkaff and his brother Syed Abdullah bin Abdulrahman Alkaff and should any such issue have children living at the date of distribution whether: —

(a) such issue shall share in the distribution of the capital estate to the exclusion of his or her children, if any; or

(b) both such issue and his or her children shall share in the distribution as tenants-in-common with other issue."

The relevant provision in the abovementioned settlement which gives rise to the aforesaid questions reads as follows: —

"Upon trust nevertheless at the expiration of the period of 21 years ... for such person or persons then living as is or are the grandchild or grandchildren of the settlors or either of them or the said Syed Abdullah bin Abdulrahman Alkaff deceased and if more than one as tenants-in-common in the proportion of 2 shares to every grandson and one share to every granddaughter or in the event of a total failure of issue of the settlors and the said Syed Abdullah bin Abdulrahman Alkaff then for such person or persons as would then be entitled thereto according to Mohamedan law were the survivor of the settlors then to die possessed of the said trust premises intestate and in the shares and proportions in which according to the same law such persons (if more than one) would be so entitled as aforesaid."

The provision in the said settlement as regards distribution of income reads as follows: —

"Upon trust to divide the same annually among such of the children or remoter issue of the settlors and of the said Syed Abdullah bin Abdulrahman Alkaff as shall from time to time be living during their respective lives in the proportion of two shares to males and one share to females but so that the issue of a deceased child shall take among them the share only which their parent or parents would have taken if living and in the same proportions as aforesaid between males and females."

Counsel for the plaintiff submits that if one looks at the provision dealing with income and compares it with the provision dealing with *corpus*, it looks as though the settlors intended that the income should be shared by the greatest number of persons; and that as regards *corpus*, it looks as though the settlors wished to restrict the distribution. Counsel submits that although this is the first impression that one gets upon reading the above provisions and it is quite natural for a settlor to benefit a large number of people where income is concerned and where *corpus* is concerned it is understandable that the settlor would want to give the *corpus* to those more near to him, such a construction is not necessarily correct. Counsel submits that what militates against that construction is the length of the income period because the estate does not become distributable until 1986 which is 98 years from the date of the settlement. Counsel asks, "having succeeded in tying up the *corpus* for such a long period, did the settlors really intend that the distribution of capital should benefit only their grandchildren?" Counsel submits that as the settlors never intended their own children to benefit they must have clearly envisaged that at the date of distribution, 98 years later at the earliest, their grandchildren might not be alive; that this view is supported by the fact that the settlors have made provision for a total failure; that in the provision relating to capital they did not provide that the capital if it failed their grandchildren should go to their great grandchildren; that they merely say that "in the event of a total failure of issue" the distribution should be according to Mohammedan law; and that this provision opens the distribution to the widest possible descendants under Mohammedan law. Counsel submits that this is an extremely vital provision because after "grandchildren" one would expect the distribution to be amongst the next generation but the settlors have not so provided. Counsel's submission is that all this indicates that the settlors did not intend to restrict the distribution to the grandchildren; that this is clear from the provision which they have made upon total failure; that the court

must look at the actual words used; that the expression "in the event of a total failure of issue" points to grandchild or grandchildren" used in the earlier part; that if the settlors had intended to be restrictive one would have expected the total failure provision to read "or in the event of total failure of such grandchild or grandchildren"; that the word "issue" embraces all one's descendants; that the word "issue" which appears in the *corpus* provision cannot mean grandchildren and that if a restricted meaning is to be given to the expression "issue" it can only mean "children" and not grandchildren.

Counsel for the plaintiff also relies on the *obiter dictum* of Sproule Ag. C.J. *In Re Alkaff's Settlements — Syed Abdulrahman bin Shaik Alkaff & Ors.* v. *Syed Mohamed bin Ahmad bin Shaik Alkaff & Ors.*[1] where certain questions relating to the trusts of a similar settlement by Syed Shaik bin Abdulrahman Alkaff dated the 17th March 1893 were propounded and Sproule Ag. C.J. in answering the first question concerning the trusts for income, said at pages 191 and 192: —

"Our question (I) relates to the trusts for income but in the course of the argument the gifts of *corpus* were relied upon by way of analogy.

The *corpus*, then, was given to male grandchildren of settlor and his two brothers who survive the period as tenants-in-common in equal shares. But settlor explains what he means by the words 'male grandchildren' when he goes on to add:—

'... or in the event of a total failure of male issue then for such person or persons as would be then entitled thereto according to Mohameddan law.'

as upon intestacy of the survivor of settlor and his two brothers and in shares according to the same law.

Clearly, then, the *corpus* is to go to male issue, that is (as we shall see later) to male descendants of males only; and in the event only of total failure of the male line, females would be entitled under Mohameddan law...."

Counsel submits that the provision directing the distribution of *corpus* in the settlement now under consideration must be construed in the same manner as Sproule Ag. C.J. construed the parallel provisions in the 1893 Settlement; that the settlors by using the expression "grandchild or grandchildren" meant "issue" which expression appears in the same provision; that therefore the *corpus* is to go to the issue of the settlors and of their brother who survive the period; that the 1893 settlement was so construed by Sproule Ag. C.J.; and that such construction was correct.

On the other hand, counsel for the first defendant submits that the provisions of the 1888 Settlement regarding the disposition of the *corpus* consists of two gifts, (1) the original gift to the grandchildren and (2) a substitutional gift to other remoter descendants in case there were no grandchildren alive at the date of distribution. Counsel submits that in the first instance the settlors' desire was to give the estate to grandchildren in preference to great grandchildren and other remoter descendants; that great grandchildren such as the plaintiff can take only under the substitutional gift on failure of the original gift; that the court must look at the operative and effective part of the clause containing the original gift to see what words are used; that if clear and unambiguous words are used then the court must give effect to those words; that the words "grandchild" and "grandchildren" are plain, precise and unambiguous words; that therefore there is no room for any doubts; that there is no question as to what the intention of the settlors was as their intention is clear; that the remoter issue can take only on the failure of grandchildren; and that the word "issue" should not be made use of to confuse the clear meaning of "grandchildren" or as an excuse to bring in remoter descendants. Counsel submits that so long as there are persons answering the description of "grandchildren" and there are about 60 such persons alive today, the court must not bring in other persons who do not answer that description.

Furthermore, counsel for the first defendant relies on the decision in *The Earl of Orford* v. *Churchill.*[2] In that case under a marriage settlement a sum of £30,000 was to be given to the settlor's eldest son "A" provided he survived the settlor. But if "A" should predecease the settlor then the money was to be given to A's children who should be alive at the death of the settlor. In other words, if the settlor's eldest son "A" should predecease him, the settlor's grandchildren (*i.e.* A's children) living at the settlor's death would take the £30,000. "A" predeceased the settlor and died leaving a daughter Mary and a grandson Henry, so that at the date of the settlor's death the rightful claimant to the £30,000 fortune was A's daughter Mary *i.e.* the settlor's only granddaughter living at the date of his death. It was argued for Henry, the settlor's great grandson that the gift extended to great grandchildren because the word "issue" appeared in the recital to the marriage settlement which recited the settlor's intention to make provision for the children and issue of the marriage. The Master of the Rolls held that Mary the granddaughter of the settlor was entitled to the whole of the £30,000 fortune to the exclusion of Henry the settlor's great grandson. In refusing to let in a great grandchild under the description of "grandchildren", the Master of the Rolls said, at page 404:

"It is true the testator in the introductory Part of this Clause does mention not only children, but issue of children. Issue is an ambiguous term. It may mean, and frequently does mean, children only. It may mean all descendants but in this case has not the testator himself distinctly explained what he meant? By confining the disposition to children and grandchildren he has in effect said that by 'issue' he meant children of children. Speaking of no other issue the inference is, that no other was in his contemplation. It would be against all rules of construction to control the operative and effective part of a clause by ambiguous words, occurring in the introductory part of it. The words in the operative part of the clause, 'children and grandchildren,' are unambiguous; are they to be controlled by the ambiguous word 'issue'; which occurs only in the introduction? No one can claim under the introductory words: whoever claims must claim under the disposition made in default of appointment.

....

I never knew an instance, where there were children, to answer the proper description, that grandchildren were permitted to share along with them, although, where there is a total want of children, grandchildren have been let in under a liberal construction of the word 'children'. I am therefore clearly of opinion, that the great grandchild of Charles Churchill, the tenant for life, is not entitled to any share of the £30,000."

Counsel for the second defendants submits that the trustees are neutral in this matter. And as to Sproule Ag. C.J.'s construction of the 1893 settlement, counsel submits that the words in the 1888 settlement are "grandchild or grandchildren" but in the 1893 settlement they are "male grandchild or male grandchilden"; that the problem before Sproule Ag. C.J., was whether "grandchildren" should include children of daughters or whether the term was restricted to male children of sons; that it was in this context that Sproule Ag. C.J. made the *obiter dictum;* that when he used the term "male issue" he was not going beyond male grandchildren; that he was making a distinction between male grandchildren from the male line as opposed to male grandchildren from the female line and that he did not intend to include in the term "grandchildren" any remoter issue.

I am unable to accept the submissions of counsel for the plaintiff. I agree with and accept the submission of counsel for the first defendant that the disposition of the *corpus* in the 1888 settlement consists of two gifts, first, a gift to the settlors' grandchildren and the grandchildren of their brother Syed Abdullah bin Abdulrahman Alkaff and in the event that there are no such grandchildren alive at the date of distribution, then there is a substitutional gift, namely, that the estate is to be distributed according to Muslim law. In my opionion the words "grandchild or grandchildren" must be given their ordinary meaning. The grandchildren of the settlors and of their brother Syed Abdullah bin Abdulrahman Alkaff have been preferred as the first object of the settlors' bounty. As the estate was being tied up for a period of nearly one hundred years, the settlors contemplated that there may not be any such grandchildren alive at the date of distribution and they therefore provided that if there are no grandchildren alive at the date of distribution, then the estate is to be distributed according to Muslim law. It is not quite correct to say that the great grandchildren have been excluded; they come in but only if there are no grandchildren alive at the date of distribution. As long as there are grandchildren to take, the great grandchildren get nothing. The words "grandchild" and "grandchildren" are plain, precise and unambiguous and the court must give effect to these words. In the words of the Master of the Rolls in the *Earl of Orford's* case "it would be against all rules of construction to control the operative and effective part of a clause by ambiguous words" appearing elsewhere. In my opinion the *Earl of Orford's* case is clear authority for the proposition that if the words used in the original gift are clear and unambiguous the court must give effect to these words and uphold the original gift. To the same effect is the decision in *In Re Rawlinson,*[3] where Joyce J. said that if the words in the original gift are plain and unambiguous taken by themselves "it would not be right to allow the construction of the gift over in one particular event mentioned, which event has not happened, to compel the court to place a forced and improper construction upon the meaning of the original gift when these words are as plain as they are here."

The answer to the first question accordingly is that upon the true construction of the abovenamed settlement dated the 21st December, 1888, the capital estate, subject to the trusts of the said settlement, is distributable on the arrival of the date of its distribution only among such person or persons then living as is or are the grandchild or grandchildren of the settlor Syed Shaik bin Abdulrahman Alkaff and his brother Syed Abdullah bin Abdulrahman Alkaff.

In view of this, the second question does not arise for consideration and there will be no order on prayer (2). Costs of all parties in terms of prayer (5).

Order accordingly.

Solicitors: *Allen & Gledhill; Oehlers & Choa; Mallal & Namazie.*